

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SELIM ZHERKA,

Plaintiff,

-against-

MICHAEL F. BOGDANOS, individually,
MICHAEL R. EDELMAN, a/k/a "THE
CONSULTANT", individually, PHILIP
AMICONE, individually and in his capacity as
Mayor of the City of Yonkers, New York, DAVID
"DOE" a/k/a "ETHAN EDWARDS",
individually, EDMOND ROE a/k/a "MOB
BUSTER", individually, JOHN POE, individually,
WILLIAM ROE, individually, and JANET DOE,
individually,

Defendants.

Case No. 08 Civ. 2062

PHILIP AMICONE,

Third-Party Plaintiff,

-against-

THE GUARDIAN NEWS, INC. and RICHARD
BLASSBERG,

Third-Party Defendants.

**PHILIP AMICONE'S MEMORANDUM OF LAW SUPPORTING NON-PARTY
GANNETT SATELLITE INFORMATION NETWORK, INC.'S
MOTION TO QUASH OR MODIFY SUBPOENA DUCES TECUM**

Defendant/Third-Party Plaintiff Philip Amicone ("Amicone"), by and through his attorneys DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, hereby joins in the motion

to quash or modify subpoena (the “Motion”) filed by Gannett Satellite Information Network, Inc. (“Gannett”).

On or about June 27, 2008, Plaintiff served Gannett with three subpoenas duces tecum (the “Subpoenas”) which seek “Each document in your possession, custody and/or control concerning the true identities of the following bloggers who have made blog entries on Politics on the Hudson: ‘Mob Buster’; ‘Ethan Edwards....’” *See* Affidavit of Mark A. Fowler, Ex. A. On July 28, 2008, after obtaining leave of the Court, Gannett filed this motion to quash or modify the Subpoenas on the grounds that Plaintiff: (a) has failed to provide adequate notification to the posters; (b) had not sufficiently identified the exact statements in question in context; and (c) will be unable to make a factual showing as to each element of his defamation claim. Amicone respectfully joins in Gannett’s Motion.¹

Accordingly, and for the reasons set forth in points 1, 2 and 4 of Gannett’s memorandum of law in support of its Motion, it is respectfully submitted that the Court grant Gannett’s Motion To Quash or Modify Subpoena Duces Tecum.

¹ In point 3 of its Memo of Law, Gannett asserts that “Mr. Zherka’s counsel advised counsel for The Journal News in early July 2008, that it was his understanding that one of the non-pseudonymous defendants in this case may know (and may even have previously disclosed) the identities of the Posters using the screen names ‘Mob Buster’ and ‘Ethan Edwards’”. *See* Gannett Memo of Law, at 11-12. According to Gannett, this disclosure may constitute an “alternative means of discovering the information sought in The Journal News.” *Id.* Amicone has no knowledge of Gannett’s contention that counsel for Zherka advised him that “one of the non-pseudonymous defendants in this case may know (and may even have previously disclosed) the identities of the Posters using the screen names ‘Mob Buster’ and ‘Ethan Edwards’”, and therefore takes no position on that issue.

Dated: White Plains, New York
July 31, 2008

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP

By:



Kevin J. Plunkett (KP 3049)
Brian T. Belowich (BB 6910)
Matthew S. Clifford (MC 1134)
1 North Lexington Avenue
White Plains, New York 10601
(914) 681-0200
Attorneys for Defendant/Third-Party Plaintiff
Philip Amicone

To: Jonathan Lovett, Esq.
Lovett & Gould, LLP
222 Bloomingdale Road
White Plains, New York 10605
Attorney for Plaintiff and
Third-Party Defendants

Mitchell John Baker, Esq.
Baker, Leshko, Saline & Blosser, LLP
One North Lexington Avenue
White Plains, New York 10601
Attorneys for Defendant
Michael R. Edelman

Michael S. Morgan, Esq.
Assistant District Attorney
District Attorney's Office
One Hogan Place
New York, New York 10013
Attorneys for Defendant
Matthew F. Bogdanos